

UNITED STATES DISTRICT COURT

MIDDLE

District of

ALABAMA

RECEIVED

Plaintiff

NOV - 8 2007

V.

APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES AND AFFIDAVIT

Defendant

CLERK
U.S. DISTRICT COURT
MIDDLE DIST. OF ALA.

CASE NUMBER:

2:07cv998-WKW

I, ZEPHYRINUS EGBUONU declare that I am the (check appropriate box)☒ petitioner/plaintiff/movant☐ other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ☒ Yes ☐ No (If "No," go to Part 2) (DETAINED)

If "Yes," state the place of your incarceration FEDERAL DETENTION CENTER, OAKDALE, LOUISIANA 71463

Are you employed at the institution? YES Do you receive any payment from the institution? \$5 PER MONTH

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

2. Are you currently employed? ☐ Yes ☐ No I AM BEING DETAINED

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

- | | | |
|---|------------------------------|--|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| b. Rent payments, interest or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| d. Disability or workers compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have any cash or checking or savings accounts? ☐ Yes ☒ No

If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? ☒ Yes ☐ No

If "Yes," describe the property and state its value.

1988 HONDA CIVIL CRX - \$350.00

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

October 26, 2007

Date

Egbruom Zephyr

Signature of Applicant

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

PRISONER AUTHORIZATION

If my request to proceed without prepayment of filing fees is granted, I understand that I am required by statute to pay the full amount of the filing fees for this case, regardless of my forma pauperis status and the disposition of this case. I further authorize the prison officials at this institution to assess, collect and forward to the Court the full amount of these fees, in monthly payments based on the average of deposits to or balance in my prison trust account in accordance with 28 U.S.C. Section 1915.

Egbuomi Zephyr

Prisoner-Plaintiff (Signature) #27041-265

CERTIFICATE OF AUTHORIZED OFFICER

I hereby certify that the Prisoner-Plaintiff herein has credit in the sum of \$ 17.79 on account at the Federal Detention Center institution where Prisoner-Plaintiff is confined.

I further certify that during the past six months the applicant's average monthly balance was \$ 156.96. I further certify that during the past six months the average of monthly deposits to the applicant's account was \$ 941.80.

A certified copy of the prisoner-plaintiff's trust account statement for the last six (6) months is attached.

10-27-07

Date

[Signature]
Authorized Officer of Institution (Signature)

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of Plaintiff's Application to Proceed Without Prepayment of Fees and Affidavit and Affidavit of Zephyrinus Egbonu in Supports of Forma Pauperis Application, via United States Postal Service, Postage Prepaid, properly affixed and addressed to:

Office of the Clerk
Civil Division
United States District Courts
Middle District Alabama
15 Lee Street
Montgomery, Alabama 36104

Respectfully submitted, this 3rd, day of November, 2007

Egbonu Zephyr

Zephyrinus Egbonu

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

ZEPHYRINUS EGBUONU

Plaintiff

NOV - 8 2007

-against-

CLERK
U.S. DISTRICT COURT
MIDDLE DIST. OF ALA.

Civil Number 2:07cv998-WKW

Jury Trial Demanded

CAPTAIN, BARRETT; DEPUTY WARDEN,
ROWELL; WARDEN, McDONELL; ALABAMA
DEPARTMENT OF CORRECTION LEGAL
DIVISION, KIM THOMAS; ALABAMA
DEPARTMENT OF CORRECTION
COMMISSIONER OFFICER, COMMISSIONER
RICHARD ALLEN; ALABAMA DEPARTMENT
OF CORRECTION, COMMISSIONER
CAMPBELL; AND JOHN AND JANE DOE
No. 1 - 10, SUED IN THEIR INDIVIDUAL
AND OFFICIAL CAPACITIES.

Defendants.

Plaintiff reserves the right
to Amend complaint and
damages.

AFFIDAVIT OF ZEPHYRINUS EGBUONU IN
SUPPORTS OF FORMA PAUPERIS APPLICATION

Plaintiff, Zephyrinus Egbuonu, an Immigration Civil Detainee,
and does petition this court as Plaintiff in forma pauperis and
submits as follows:

Plaintiff is over twenty-one (21) years of age and resident
of Los Angeles, California. Plaintiff have been confined in jail

and prison since 2003 and have no income and no assets. Plaintiff have no means of support. Plaintiff request this court to confirm his status as in forma pauperis and to waive the cost in this civil complaint as well as the cost of the summons and transcript.

Plaintiff now states application of Prisoner's Litigation Reforms Act of 1996 ("PLRA") filing fee provision to the Plaintiff, an **Immigration Civil Detainee** will be in error. As a threshold matter, Plaintiff submits that because the plain language of the PLRA, as codified in 28 U.S.C.A section 1915(h) clearly refers Prisoners as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violation of criminal law or the terms and conditions of parole, probation, pretrial release or diversionary program." Plaintiff is not under any criminal sentence but an **Immigration Civil Detainee** awaiting removal.

Plaintiff submits that courts have held the "Prisoner" is limited to an individual who is currently detained as a result of accusation, or sentence for criminal offenses. **Page v. Torrey**, 201 F. 3d 1136, 1139 (9th Circuit 2000). Thus, the term Prisoner does not encompass a **Civil Detainee** such as the Plaintiff in this case and the filing fee provision should not apply. Especially, since Plaintiff is not now accused of any criminal offenses, neither is Plaintiff awaiting or serving sentence, but instead a **Civil Immigration Detainee** awaiting removal or release from custody.

Consistent with the principle that removal is a **Civil** rather than a **Criminal** procedure, the Ninth Circuit has held an held de-

tained by INS/ICE pending removal is not a "**Prisoner**" within meaning of the PLRA, and thus found that the "**Filing Fee**" requirement of the PLRA do not apply to an alien detainee proceeding in "**forma Pauperis**." See **Agyeman v. Ins**, 296 F. 3d 871 (9th Cir. 2002). See also **Kolocotronis v. Morgan**, 247 F. 3d 726 (8th Cir. 2001) [holding an inmate being held at a mental institution pursuant to a finding that he was not guilty by reason of insanity was a Prisoner within the meaning of PLRA]; **Lafontant v. INS**, 135 F. 3d 158, 165 (D.C. Cir 1998) [Incarcerated alien facing deportation is not a **Prisoner** for the purpose of the PLRA]; **ojo v. INS**, 106 F. 3d 680, 683 (5th Cir. 1997) [PLRA does not bring an alien detainees within its sweep.]

The Eleventh Circuit Court of Appeals within whose jurisdiction this Honorable Court sits had also followed the reasoning of above cited cases in holding that "**PLRA**" straight forward definition of "**Prisoner**" apply only to person incarcerated as punishment for criminal conviction" see **Troville v. Venz**, 303 F. 3d 1256, 1260 (11th Circuit 2002). Citing several immigration detainees cases, the Court found that a Civil detainees simply does not fall under 28 U. S. C. A. section 1915 definition of Prisoner and concluded that **Troville** needs not pay the filing fee for his Civil Right Action.

Based on the foregoing citations and authorities, this Honorable Court may be bound by the Honorable Eleventh Circuit's precedent in **Troville**, and must thus waive PLRA's filing fees provision to this Immigration Civil detainee.

Plaintiff moves to point out that the Plaintiff earn income

in the Federal Detention Center Facility is \$5.00 per month, and only subsist on meager donations from friends and family for the payment of postage, and other necessities. It is respectfully submitted that even the PLRA did not allow the payment of fees that a litigant did not have.

W H E R E F O R E, for the foregoing reasons, this Honorable Courts allow Plaintiff's Civil Complaint to proceed without pre-payment of fees and confirm his status as in forma pauperis and waive the cost in this civil complaint as well as the cost of the summons and transcript.

Respectfully submitted on this _____, day of November, 2007.

Egbuonu Zephyr

Zephyrinus Egbuonu
27041 - 265
Federal Detention Center
P. O. Box 5010
Oakdale
Louisiana 71463